

Message Text

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ACTION L-03

INFO OCT-01 IO-12 ADP-00 AF-10 ARA-11 EA-11 EUR-25 NEA-10

RSC-01 SSO-00 NSCE-00 USIE-00 INRE-00 CIAE-00 DODE-00

PM-07 H-02 INR-10 NSAE-00 NSC-10 PA-03 PRS-01 SS-15

ACDA-19 OIC-04 MBFR-03 SAJ-01 GAC-01 RSR-01 OMB-01

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O R 231306 Z MAY 73

FM USMISSION GENEVA

TO SECSTATE WASHDC IMMEDIATE 9469

INFO USUN NEWYORK 8861

C O N F I D E N T I A L SECTION 1 OF 2 GENEVA 2450

E. O. 11652: GDS

TAGS: PFOR, UN

SUBJ: DEFINITION OF AGGRESSION COMMITTEE

REFS: A. STATE 96930 B. STATE 98051

1. AFTER RECEIPT REF A, US DEL DID DISCUSS PRIORITY/
INTENT LANGUAGE PARA 1(B) REF A WITH OTHER DELS.
OTHER MEMBERS OF GROUP OF 6 WERE WILLING ACCEPT THIS
CHANGE BUT, EVEN IN LIGHT OF ARGUMENT WE MADE PER
PARA 3 REF A, ARE UNABLE TO UNDERSTAND PURPOSE OF
CHANGE AND URGED US NOT TO TABLE IT FOR FEAR OF UP-
SETTING VERY TENUOUS COMPROMISE ON GUYANESE LANGUAGE.
AS REPORTED SEPTTEL, CG III REPORT TO WORKING GROUP
CONTAINING GUYANESE TEXT AS CONTAINED IN ARTICLE 2 OF
PARA 1, GENEVA 2390, WAS ADOPTED ONLY AFTER HEATED
THREE- HOUR BATTLE EVENING MAY 22 IN WHICH NON- ALIGNED
AND SOVIETS DEMONSTRATED PREPAREDNESS TO MOVE AHEAD
IN FACE OF ADAMANT OPPOSITION OF ARABS AND MEXICO.
(CG REPORT WILL REFLECT ONLY VIEWS OF DELS PARTICIPAT-
ING IN CT, IN THIS CASE, UK AND CANADA FROM GROUP OF SIX).
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WE HAVE, HOWEVER, SUGGESTED DEPARTMENT'S CHANGE INFORMALLY TO GHANA REP (LAMPTEY), WHO HAS LED EFFORTS AMONG NON-ALIGNED TO ARRIVE AT MODERATE POSITIONS IN EFFORT TO COMPROMISE, AS POSSIBLE MEANS OF ATTENUATING IMPORTANCE OF SPECIFIC REFERENCE TO " PURPOSES" WHICH STILL A SERIOUS PROBLEM FOR MEXICO AND ARABS. HE FELT THIS MIGHT HELP, THOUGH NOT MUCH, AND COULD BE SUGGESTED AT APPROPRIATE TIME. COMMENT. WE FRANKLY BELIEVE ORIGINAL VERSION WAS BETTER FROM US POINT OF VIEW BECAUSE DEPARTMENT'S VERSION LEAVES OPEN NON- ALIGNED ARGUMENT THAT PURPOSE CAN NEVER BE BASIS FOR FAILURE OF SC TO DETERMINE EXISTENCE OF ACT OF AGGRESSION. ORIGINAL VERSION CLEARLY SAYS IT CAN; DEPARTMENT'S VERSION SIMPLY SAYS SC SHOULD THINK ABOUT IT. HOWEVER, WE WOULD PROBABLY BE ABLE OBTAIN CHANGE AT APPROPRIATE MOMENT. END COMMENT.

2. ON INDIRECT USES OF FORCE, DELEGATION VERY CONCERNED ABOUT APPROACH SET FORTH PARA 3 REF B. THE MAJOR CONCERN OF THIS DELEGATION IS TO PROTECT ALL THE LEGAL POSITIONS OF THE UNITED STATES UNDER THE CHARTER AND OTHER PRINCIPLES OF INTERNATIONAL LAW. THERE IS, HOWEVER, A LARGE DIFFERENCE BETWEEN PROTECTION OF OUR POSITION ON THE ONE HAND AND AN INSISTENCE THAT OTHERS ACCEPT IT ON THE OTHER. WE HAVE ASSUMED IT HAS BEEN CLEAR TO EVERYONE INVOLVED IN THIS EXERCISE THAT SOLUTION TO THIS PROBLEM IS TO FIND GENERAL FORMULATIONS WHICH ARE BROAD ENOUGH TO COVER THE POSITIONS OF BOTH SIDES ON VARIOUS LEGAL ISSUES.

3. IT IS COMPLETELY UNREALISTIC, AS A POLITICAL MATTER, TO PRESS FOR FORMULATIONS, WHICH IN
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FM USMISSION GENEVA
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C O N F I D E N T I A L SECTION 2 OF 2 GENEVA 2450

IN SHORT, WE BELIEVE DEPARTMENT IS UNDULY COMPLICATING
A RELATIVELY SIMPLE ISSUE.

5. DELEGATION BELIEVES THAT AN INSISTENCE BY THE US ON
ENSHRINING ITS OWN LEGAL CONCEPTS IN THIS " DEFINITION"
AT THE EXPENSE OF THOSE HELD BY OTHERS WOULD CONSTITUTE
AN EXERCISE IN LEGAL PURISM AT THE EXPENSE OF BALANCED
POLITICAL PERSPECTIVE. IN POINT OF FACT, OTHERS HAVE
NOW COME TO THE REALIZATION THAT THEY CANNOT INSIST ON
THEIR OWN LEGAL APPROACHES AT THE EXPENSE OF OURS. THIS
WILLINGNESS IS REFLECTED IN UNPRECEDENTED NON- ALIGNED
EFFORT TO ADDRESS THE PROBLEM OF INDIRECT USE OF FORCE AND
IN THE AGREEMENT OF THE LARGE MAJORITY ON THE GUYANESE
TEXT ON PRIORITY/ INTENT, WHICH CONTAINS SOME NOTIONS
(E. G. FIRST USE IS ONLY " PRIMA FACIE" EVIDENCE OF AGGRES-
SION) TOTALLY OFFENSIVE TO THEIR LEGAL THEORIES. IN
SHORT, THE PROPONENTS OF THE DEFINITION OF AGGRESSION
HAVE NOW ESSENTIALLY ABANDONED THEIR ORIGINAL PURPOSE OF
ESTABLISHING AS ACCEPTED INTERNATIONAL LAW THEIR OWN
LEGAL THEORIES AS TO WHAT CONSTITUTES " AGGRESSION", AND
ARE WILLING TO LIVE WITH A SOLUTION WHICH COVERS ALL
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POSITIONS IN THE INTEREST OF GETTING THIS OVER WITH. IT
IS OUR STRONGLY HELD VIEW THAT THE UNITED STATES, WHICH
HAD NO SUCH OBJECTIVE IN THE FIRST PLACE, SHOULD NOT FALL
VICTIM TO THE SAME ATTITUDE THAT LED OTHERS TO PROPOSE
THIS MISGUIDED EXERCISE IN THE BEGINNING, PARTICULARLY
IN LIGHT OF ITS VERY LIMITED LEGAL RELEVANCE.

6. WHAT IS IMPORTANT, FROM POLITICAL POINT OF VIEW,
IS THAT " DEFINITION" REFLECT PROPOSITION THAT INDIRECT
USES CAN BE EVERY BIT AS SERIOUS, FROM POINT OF VIEW OF
MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY, AS DIRECT
USES. THIS POINT MADE VERY WELL BY INCLUSION OF CONCEPT
OF COMPARABLE " GRAVITY" OF ACTS INVOLVED. MOREOVER,
SOME LIMITATION LIKE THIS CLEARLY NECESSARY TO ALLAY
NON- ALIGNED CONCERN THAT INCLUSION OF REFERENCE TO
INDIRECT USES MIGHT, ON ERRONEOUS LEGAL THEORY, PROVIDE
EXCUSE FOR POSSIBLE MASSIVE RESPONSE TO RELATIVELY MINOR
ACTS, A POINT WHICH COULD HAVE BEEN DEALT WITH IN TERMS
OF " PROPORTIONALITY," A SOLUTION WHICH WE HAVE OF COURSE
NOT PURSUED IN LIGHT OF DEPARTMENT' S INSTRUCTIONS.

7. COMMENT. IT IS, OF COURSE, POSSIBLE THAT WE MAY BE
ABLE TO AVOID TAKING FINAL POSITION ON FORMULATIONS OF
SORT WHICH HAVE TROUBLED DEPARTMENT, SINCE THESE FORMULA-

TIONS MIGHT WELL PROVE UNACCEPTABLE TO SYRIA ET AL (WHO BELIEVE THEY GO TOO FAR IN OUR DIRECTION) AND THEY MAY THEREFORE BE REPLACED WITH MORE RADICAL, OBVIOUSLY UNACCEPTABLE FORMULATIONS. FOR EXAMPLE, IN FURTHER MEETING OF INFORMAL GROUP AM MAY 23, SOVIET REP SUGGETED THE FOLLOWING FORMULATION AS THE FINAL PHRASE IN THE PROPOSED SUB-PARA ON INDIRECT USES: " OR ITS OPEN AND ACTIVE PARTICIPATION THEREIN." WHILE WE OBJECTED TO ADDITION OF WORD " OPEN", SYRIAN REP INDICATED PROPOSAL UNACCEPTABLE EVEN WITH THIS NEW ADDITION. IN FURTHER ATTEMPT MEET SYRIAN CONCERNS, SOVIET REP COUPLED THIS PROPOSAL WITH NEW, CLEARLY UNACCEPTABLE LANGUAGE ON SELF- DETERMINATION, GOING BEYOND LANGUAGE IN FRIENDLY RELATIONS DECLARATION. ALTHOUGH THESE DEVELOPMENTS TROUBLING, GHANAIAAN REP IS ALREADY ACTIVELY ATTEMPTING TO MOVE DISCUSSION BACK ON THE RAILS-- I. E. BACK TOWARDS MORE MODERATE FORMULATIONS. END COMMENT. BASSIN
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